IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (Ord.) No. 231 of 2000

Judgment reserved on 14.6.2007

Date of decision 15.6.2007

Uttam Singh **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?[1]

For the appellant : Pt Om Parkash with Mr. Rajinder Sharma, Advocates.

For the respondent : Mr. Ashok Chaudhary, Addl. A.G.

Surjit Singh, Judge

This appeal by plaintiff / appellant Uttam Singh is directed against the order of the learned District Judge, whereby accepting the appeal against the decree of the trial Court and setting aside the said decree, the case has been remanded to the trial Court with the direction that the defendant / respondent be afforded an opportunity to amend the plaint so as to incorporate the date of the order which is sought to be declared as nullity in the prayer clause and one more opportunity has been granted to the respondent (State) to file written statement.

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[1] Whether reporters of Local papers may be allowed to see the Judgment?

2. Facts relevant for the disposal of the appeal may be summed up thus. Appellant Uttam Singh filed a suit for declaration that the order dated 10.2.1997, passed by the Settlement Collector reviewing the earlier order dated 31.3.1993, was illegal, void and of no consequence, because the Settlement Collector did not have the jurisdiction to review the said order dated 31.3.1993. By way of further relief, issuance of permanent prohibitory injunction was sought restraining the respondent / defendant from causing any interference in his possession over the land affected by the aforesaid impugned order. It was stated that the suit land measuring 3083-75 square meters was initially 'Shamlat' and it was in the cultivating possession of the plaintiff / appellant. This land was wrongly shown to have vested in the State, i.e. respondent / defendant, under the provisions of the H.P. Village Common Lands (Vesting & Utilization) Act, 1974, When the plaintiff / appellant came to know about this position during the course of Settlement, he applied for correction of entries in the revenue papers. The Settlement Officer passed order dated 31.3.1993 that the land had not vested in the State under the provisions of the aforesaid Act, because it being in possession of the plaintiff / appellant as a co-sharer, was exempt from such vestment. On the basis of this order dated 31.3.1993, mutation was entered and attested and the plaintiff / appellant was recorded as owner in possession of the suit land. This order was reviewed by the Settlement Collector, vide order dated 10.2.1997. The appellant / plaintiff alleged that the order was without jurisdiction as the H.P. Village Common Lands (Vesting & Utilization) Act does not contain any provision for the review of an order passed by the Collector.

3. Defendant / respondent put in appearance through the District Attorney on 22.10.1997. On that date the matter was adjourned to 12.11.1997 for filing written statement. Adjournment was on 12.11.1997 sought by the District Attorney for filing written statement as the same was stated to be not ready. The matter was then adjourned to 7.1.1998 for filing written statement. That day again adjournment was sought for filing written statement. Last opportunity was granted to file the written statement on 9.3.1998. Even on that date written statement was not filed and one more last opportunity was granted and the matter was adjourned to 25.4.1998. On 25.4.1998 also the written statement was not filed and one more opportunity was sought. Again the trial Court passed the order granting last opportunity for filing written statement and adjourned the case to 25.6.1998. Even on that day written statement was not filed and consequently defence of the defendant / respondent was struck off and the matter was listed for evidence of the plaintiff / appellant. Plaintiff / appellant adduced evidence and finally, vide judgment dated 1.6.1999 the suit of the plaintiff was decreed.

4. Respondent / defendant filed appeal in the Court of learned District Judge challenging the decree. The learned District Judge accepted the appeal and passed the impugned order remanding the case as aforesaid.

5. Appellant's grievance is that the learned district Judge was not justified in ordering the affording of one more opportunity to the respondent / defendant for filing the written statement, when it had already been afforded five opportunities, three of which were termed last opportunities, over a period of more than eight months. Appellant is also

aggrieved by the observation made by the learned District Judge in his order that the plaint requires amendment, as the date of the impugned order is not mentioned in the prayer clause.

6. I have heard the learned counsel for the parties and gone through the record.

7. The record of the trial Court shows that more than sufficient time had been granted to the defendant / respondent to file written statement, but its functionaries did nothing to prepare and submit the written statement. The trial Court granted three opportunities, terming each of such opportunity as last opportunity, but still the functionaries of the defendant / respondent did not wake up. As a matter of fact, the decision of the case rested on a short question of law, viz. whether the Settlement Collector's order of review was without jurisdiction. There being no provision in the Act for the review of an order passed by the authorities named therein. Therefore, the non-filing of the written statement by the defendant / respondent cannot be said to have caused any prejudice to it. The learned District Judge also noticed the fact that there is no provision in the Act for the review of an order and, therefore, the order is without jurisdiction.

8. In view of the above stated position, the order of the learned District Judge remanding the case for affording an opportunity to the respondent / defendant to file written statement, cannot be upheld.

9. The second part of the order of the learned District Judge is also not sustainable, it being based on a hyper technical view of the matter. In paras 4 and 5 of the plaint it is specifically mentioned that the order dated 10.2.1997 of the Settlement Collector is illegal and without jurisdiction and it

is this order which is sought to be declared as such. Therefore, mere omission of the date of this order in the prayer clause should not make any difference.

10. As a result of the above stated position, appeal is accepted, impugned order of the learned District Judge is set aside and the decree dated 1.6.1999, as passed by the trial Court, is restored.

June 15, 2007 (BC) **(Surjit Singh)**
Judge